



## Mason Contractors Association of Connecticut

### HOUSE BILL 5570, AN ACT CONCERNING THE APPLICABILITY OF STATUTES OF LIMITATIONS TO ACTIONS BROUGHT BY THE STATE OR A POLITICAL SUBDIVISION OF THE STATE

Judiciary Committee

March 17, 2014

The Mason Contractors Association of Connecticut is an association of contractors who perform masonry, stone setting and other stone work. Its purpose is to help educate, train, and represent the mason contractor through its various programs aiding members to maintain a competitive edge against other construction methods. In addition, MCAC promotes the use of masonry, recruits and assists in training of the industries workforce, impacts state legislative and standard issues affecting contractors, and provides educational programs for the key employees of member firms.

House Bill 5570, An Act Concerning the Applicability of Statutes of Limitations to Actions Brought by the State or a Political Subdivision of the State, would address the decision in State of Connecticut v. Lombardo Brothers Mason Contractors, Inc., et al. 307 Conn. 412 (2012) by abrogating the common law doctrine of *nullum tempus occurrit regi* (no time runs against the king) in specific tort, product liability and contract actions for the purpose of extending the statutes of limitations for bringing a claim in those actions to the state and any political subdivision of the state. MCAC signed onto an *amicus curiae* brief submitted to the Connecticut Supreme Court in support of the defendant-contractors, and is a member of a coalition of design and construction contracting trade associations in support of the bill.

The bill simply applies several statutes of limitations to the state of Connecticut in the same manner as to actions brought by private persons. This is only fair for companies like mason contractors that contract with the state. There is no valid reason that the state should not be subject to the same statutes of limitations as the people that contract with the state.

The Mason Contractors Association of Connecticut supports House Bill 5570 and, for the following reasons, respectfully requests that the committee approve the bill:

- Statutes of limitations are a fundamental part of law and equity. It is unreasonable to expect construction firms to be subject to claims by the state many years after a project has been built.

- It is impractical, unfair, and in some cases, fundamentally impossible, to bring a claim against a construction company or design firm 15, 20, 30, or even 50 years after the completion of a construction project. With the passage of time, it would be challenging, not to mention costly or impossible, to obtain documentation and records, and to locate key stakeholders. Such a claim would be cost-prohibitive for a small contractor to defend.
- Public owners could, years after completion of a project, assert claims that are more likely to have arisen from maintenance, life span or other factors not caused by the original design or construction team. The threat of litigation costs or damaging their relationship with the state may compel many contractors to compromise claims that have limited merit.
- As a result of the Lombardo decision, contractors may not be able to purchase completed operations insurance coverage, or tail coverage, on state projects because insurers may not offer it or they unable to quantify the risk.
- The decision may have a chilling effect on the ability of some bond producers to provide surety coverage on state projects. Some contractors may not be able to bid projects because their sureties would not provide a bond on projects for which there is open-ended liability.

Allowing the state to commence litigation solely at its convenience, which is the logical effect of the Lombardo decision, is unfair and would harm the state and potential defendants. In Lombardo, problems arose with the UConn Law School library less than a year after the building opened, however, the state waited twelve years to assert a claim. Those intervening years resulted in documents being lost, memories fading and key individuals involved in the project no longer being available. Thus, any trial that results would not be fair to any party, including the state or the defendants.

The lack of a statute of limitations that applies to the state makes Connecticut appear unfriendly to business. Construction companies and mason contractors employ many workers. Many other states, including neighboring states of Massachusetts, New York and New Jersey have enacted laws to impose statutes of limitations against the state. Connecticut should join that majority in an effort to be business-friendly and fair to constituents and contractors.

For additional information or any questions concerning House Bill 5570, please contact Michael Thompson, Executive Director of MCAC, at (860) 413-3188.